



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Remove ID Mark/Increase Punishment.
Bill Number: House Bill 743 (First Edition)
Sponsor(s): Representatives C. Smith and Miller

SUMMARY TABLES

CHARGES

	<i>Charge</i>	<i>Cost per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
Administrative Office of the Courts	Class 1 Misdemeanor → H Felony	\$559 increase per charge	Deputy Clerk: \$54,532	98 increased charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class 1 Misdemeanor → H Felony	Percent of cases handled by IDS: 78%		Per increased charge to the PAC fund \$270

CONVICTIONS – ACTIVE SENTENCE

	<i>Charge</i>	<i>Avg. Active</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Prisons	Class 1 Misdemeanor → H Felony	34%	Custody: \$6,450	Correction Officer I: \$49,173	8 new convictions = 1 new CO
DPS – Community Corrections	Class 1 Misdemeanor → H Felony	34%	Post-Release Supervision: \$1,530	Probation Parole Officer (PPO): \$53,760	35 new convictions = 1 new PPO

CONVICTIONS – SUSPENDED SENTENCE

	<i>Charge</i>	<i>Avg. Probation</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Community Corrections	Class 1 Misdemeanor → H Felony	66%	\$1,870 increase per conviction	PPO: \$53,760	29 new convictions = 1 new PPO

* All costs annualized

FISCAL IMPACT SUMMARY

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense. Sections 1 and 2 of the proposed bill each contain a change to an existing offense that elevates a Class 1 misdemeanor to a Class H felony if the value property altered, sold, or possessed exceeds \$1,000. The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, due to a lack of sufficient historical data on this offense or similar offenses, the Fiscal Research Division (FRD) is unable to provide a

reasonable estimate of the total fiscal impact. Each additional person charged with this crime will have a cost to the judicial system and each additional person convicted will have a cost to the correction system. All costs in the tables above have been annualized. Offense changes are typically effective on December 1. FRD assumes that costs incurred in the first year to the judicial and correction systems would be less than annualized costs due to lag time in charges and convictions.

FISCAL IMPACT OF H.B.743, V.1

	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Fiscal Impact
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FISCAL ANALYSIS

General

The Sentencing and Policy Advisory Commission (SPAC) prepares prison population projections for each bill containing a criminal penalty. SPAC assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense which may lead to an increase or decrease in the number of offenders charged. FRD assumes that new offenses and changes to an offense’s scope will have no historical data upon which to estimate the number of charges or convictions that might occur. FRD assumes that a change in offense class may have an unknown effect on charge or conviction numbers. To that end, FRD estimates the average cost to the judicial and correction systems for one additional charge or conviction.

Judicial Branch

The Administrative Office of the Courts (AOC) provides FRD with a fiscal impact analysis for most criminal penalty bills. Fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in charges and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Sections 1 of the proposed bill elevates a Class 1 misdemeanor to a Class H felony for altering, destroying, or removing personal identification marks on personal property valued at \$1,000 or more. This elevation in violation class also applies to any person who knowingly sells or purchases this altered personal property valued at \$1,000 or more. AOC does not maintain charge data that

that indicates the dollar value of the personal property covered under G.S. 14-160.1.(a). As a result, FRD cannot determine the fiscal impact for the proposed changes to this violation class.

Sections 2 of the proposed bill also elevates a Class 1 misdemeanor to a Class H felony for altering, destroying, or removing personal identification marks on or farm equipment, machinery, or apparatus valued at \$1,000 or more. The elevation in violation class also applies to any person who knowingly sells or purchases this altered equipment, machinery, or apparatus valued at \$1,000 or more. AOC does not have an offense code for violations of G.S. 14-401.4 and as a result, FRD cannot determine the fiscal impact for the proposed changes to this violation class.

Based on the AOC estimate of the average cost to the court for a charge by offense class, average cost to the court for a person charged with a Class 1 misdemeanor would be \$274. The average cost to the court for every additional person charged with a Class H felony would be \$833. This is an increase of \$559 per charge. Because the annual cost of a deputy clerk is \$54,532, FRD finds that 98 charges of the increased offense would be equivalent to increasing the workload need of the court system by one deputy clerk.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research uses this data to calculate a weighted average of IDS costs for each class of offense. This estimate assumes the appointment of a Private Assigned Counsel (PAC) attorney. In districts that have Public Defender (PD) offices, cases may be handled by those offices. In those instances, this cost may not be incurred, but the PD office may experience costs in terms of greater workload.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 78% of Class H felony cases. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney. The weighted average cost of a new Class H felony is \$475 per case for a PAC attorney. The per charge increase to the PAC fund is \$270. However, because AOC does not maintain data for the types of violations in the proposed bill, FRD cannot provide a reasonable estimate for the proposed changes to this violation class on IDS.

Department of Public Safety – Prisons

This bill proposes changes to a penalty from a Class 1 misdemeanor offense to a Class H felony. Normally misdemeanor offenders who receive active sentences will serve them in the local jail and as a result creating new misdemeanors or changes in misdemeanor class from one misdemeanor to another are not expected to have any fiscal impact to prisons for active sentencing. However, because the proposed bill would amend G.S. 14-288.2(b) from a Class 1 misdemeanor to a Class H felony, the proposed changes are as if a new Class H felony were being created.

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. The following table shows the estimated annual impact if there were 4 convictions (the threshold) or 20 convictions for this proposed offense per year. The five-year estimate considers the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission's Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	6	11	11	11	11

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system based on FY 2019-20 expenditures is \$21.22 per day, or \$645 per month, which includes the cost of food, clothing, and health care. In FY 2019-20, 34% of Class H felony offenders received active sentences averaging 10 months. For every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months).

Department of Public Safety – Community Corrections

All felony offenders may be given exclusively active or suspended sentences or suspended in conjunction with imprisonment (split-sentence). Under S.L. 2011-192, the Justice Reinvestment Act (JRA), both community and intermediate probation may include sanctions such as electronic monitoring, short-term periods of confinement, community service, substance abuse assessment, monitoring, and treatment, or participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

Active Sentence

All active sentences for felony offenses result in a minimum of nine months of post-release supervision (PRS) for F-I level offenses. Normally misdemeanor offenders who receive active sentences will serve them in the local jail and as a result creating new misdemeanors or changes in misdemeanor class from one misdemeanor to another are not expected to have any fiscal impact to prisons for active sentencing. However, because the proposed bill would elevate a Class 1 misdemeanor to Class H felony, the proposed changes are as if a new Class H felony were being created. For every additional Class H felony offender receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender (\$170 per month times 9 months).

Suspended Sentence

CCS also oversees probation. In FY 2019-20, 62% of Class 1 misdemeanor offenders received probation. Supervision by a probation officer costs \$170 per offender per month. The average length of probation imposed for this class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender (\$170 per month times 15 months).

In FY 2019-20, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every additional Class H felony offender receiving a non-active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). Increasing a Class 1 misdemeanor to a Class H felony is a \$1,870 increase per conviction. Because the annual cost of a PPO is \$53,760, FRD finds that 29 additional convictions of

this changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of the CCS by one PPO.

TECHNICAL CONSIDERATIONS

N/A.

DATA SOURCES

Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

CONTACT INFORMATION

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

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